

COVID-19 Regulatory Flexibilities

House Health Care

February 2023

Emily Kisicki – Director of Policy

Sebastian Arduengo – Assistant General Counsel

Federal Coverage Requirements during the COVID-19 Public Health Emergency for Private Health Insurance

Enabling Legislation

- Families First Coronavirus Response Act, P.L. 116-127 (03/18/2020)
- Coronavirus Aid, Relief, and Economic Security or “CARES” Act, P.L. 116–136 (03/27/2020)
- American Rescue Plan Act or “ARPA,” P.L. 117-2 (03/11/2021)

The U.S. Departments of Labor, Health and Human Services, and the Treasury have also issued regulations and guidance implementing all of the above laws.

Federal Coverage Requirements: Testing

- Health plans must cover COVID-19 diagnosis and testing without member cost-sharing.
- Plans cannot require prior authorization or require members to have symptoms or suspected exposure to COVID-19 as a condition of coverage.
- Plans are required to cover or reimburse members for the cost of up to eight over-the-counter COVID-19 tests per enrollee per month.
- Plans are required to cover out-of-network tests, reimbursing testing claims at up to the cash price that the provider has publicly posted on their website.

Federal Coverage Requirements: Treatment

- No special financial protections for treatment of COVID-19.
- Applicable member cost-sharing (copayments and deductibles) applies to treatment of COVID-19, subject to existing protections like the annual out-of-pocket maximum for in-network coverage.

Federal Coverage Requirements: Prevention

- Health plans must cover all COVID-19 vaccinations (including boosters) without member cost-sharing or requiring prior authorization.
- Plans cannot require member cost-sharing for office visits if the primary purpose of the visit is for vaccination.
- Plans must reimburse network providers the negotiated rate for vaccination services and out-of-network providers a “reasonable rate,” such as the Medicare reimbursement rate.

Vermont Coverage
Requirements during the
COVID-19 Public Health
Emergency for Private
Health Insurance

Enabling Legislation

- Act 6 of 2021, section 8, requires DFR to consider adopting and gives the Commissioner authority to adopt emergency rules to:
 - expand health insurance coverage for, and waive or limit cost-sharing requirements directly related to, COVID-19 diagnosis, treatment, and prevention; and
 - suspend health insurance plan deductible requirements for all prescription drugs, except to the extent that such an action would disqualify a high-deductible health plan from eligibility for a health savings account pursuant to 26 U.S.C. § 223.
- As amended by Act 85 of 2022, Act 6 further gives the Commissioner authority to adopt the emergency rule until March 31, 2023 notwithstanding the requirements of the Vermont Administrative Procedures Act.

Previous Emergency Rules and Bulletins

- Rules H-2020-01-E, H-2021-01-E, and H-2021-02-E.
- Insurance Bulletins 209 & 210.
- All previous Emergency Rules and Bulletins were superseded by Rule H-2022-01-E.

DFR Rule H-2022-01-E: Access to Health Care Services Related to COVID-19

- Testing Coverage:
 - Requires coverage of all FDA-authorized SARS-CoV-2 testing without member-cost sharing.
 - Requires coverage of items and services related to the furnishing or administration of COVID-19 diagnostic testing, including facility fees, without member cost-sharing.
- Vaccination Coverage: Requires coverage of any qualifying coronavirus preventive service without member cost-sharing, consistent with federal law.
- Treatment: Requires coverage for the following services without member cost-sharing:
 - medically necessary COVID-19 treatment, whether delivered in an inpatient or outpatient setting;
 - medication administered or prescribed in connection with medically necessary COVID-19 treatment; and
 - emergency and nonemergency ambulance transport of members diagnosed with or suspected of having COVID-19 to and from recovery or isolation areas.

Out-of-Network Services

- Rule H-2022-01-E requires health insurers to cover out-of-network services related to COVID-19 without member cost-sharing.
- Insurer liability is limited to the reasonable and customary value for the health care services rendered.
- Insurers have the responsibility to respond to, defend against, and resolve any provider request or claim for payment exceeding the amount it paid or reimbursed.

End of the COVID-19 Public Health Emergencies

- On June 14, 2021, Governor Scott ended all COVID-19 Restrictions, and ended Vermont's COVID-19 state of emergency.
- Based on current COVID-19 trends, the Department of Health and Human Services (HHS) is planning for the federal Public Health Emergency (PHE) for COVID-19, declared under Section 319 of the Public Health Service (PHS) Act, to expire at the end of the day on May 11, 2023.
- Federal requirements related to coverage of COVID-19 testing and vaccination end with the federal PHE.